IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 102 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHUPENDRAKUMAR ISHWARLAL PANCHAL - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR JM PANCHAL for Appellant(s) : 1,MR KJ PANCHAL for Appellant(s) : 1,
MR KC SHAH APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 22/10/2007

ORAL JUDGMENT

1. The appellant has preferred this appeal u/s 374 of the Criminal Procedure Code, 1973 (“Cr. P.C.” for short) and challenged the judgment and order of conviction passed by learned Addl. Sessions Judge, Fast Track Court, Mehsana on

26-11-2005 in Sessions Case No.232 of 2004.

2. Complainant Rajendrabhai Somabhai lodged complaint before Mehsana City Police Station on 14-3-2003 alleging that his daughter Meeta was married to appellant – convict Bhupendrakumar Ishwarlal Panchal before about 5 years of the incident and they had a daughter Bansari aged about 2 2/1 years; that the appellant – convict was serving in Reliance Petrochemicals, at Jamnagar and Meeta was staying with him; that before about 18 months of the incident there was telephone call from the deceased to come to Jamnagar as she was in difficulty and therefore he, his wife Arunaben and son Rakesh reached Jamnagar and on inquiry Meeta informed that the appellant – convict had extra marital relations and was inflicting physical and mental cruelty to her; that he and his son returned to Mehsana; that his wife Meeta and appellant – convict went to Ahmedabad and her in-laws were informed about cruelty but they gave vague reply; that his wife Arunaben returned to Mehsana leaving Meeta at Ahmedabad and she made a call to Meeta at night but she did not receive proper reply, therefore, on the next day i.e. on 11-2-2000 he with his wife Arunaben, mother Dahiben, brother Chandrakant, maternal uncle Gordhanbhai and his son Rakeshkumar went to Ahmedabad at appellant

convict's house ; that on inquiry appellant – convict did not give any reply but Ishwarlal, father of appellant - convict got enraged and asked them to take Meeta to their house; therefore, they took Meeta to Mehsana and Bansari remained there and since then Meeta was at their house; that on 8-3-2002 they took Meeta to Ahmedabad to attend “Besana” as mother of her father-in-law died but nobody called them; that Meeta suffered depression as she was not allowed to play with her daughter Bansari when they were returning from “Besana”; that on 13-3-2002 after dinner at about 11-50 at night Meeta set herself on fire by pouring kerosene in the bath-room and she died on account of burns sustained by her.

3. On the basis of the complaint offence was registered as I – CR No. 87 of 2002 before Mehsana City Police Station for the offence punishable u/ss 498-A, 306 and 114 of the I.P. Code and u/ss 3 and 7 of the Dowry Prohibition Act. During the course of investigation, inquest panchnama and panchnama of scene of offence were drawn and dead body of Meeta was sent for postmortem. Appellant – convict and other accused were arrested. The muddamal articles were recovered and sent to F.S.L. for examination. On completion of investigation charge sheet was laid before learned Chief

Judicial Magistrate, Mehsana for the aforesaid offences. As the offence was exclusively triable by the Sessions Court, the case was committed to Sessions Court, Mehsana and it was registered as Sessions Case No. 234 of 2004.

4. The learned trial Judge framed charge at Exh.8 against appellant – convict and other accused for the aforesaid offences. The charge was read over to them. They denied having committed the offence and claimed to be tried. Therefore, prosecution adduced evidence to prove the charge. On completion of recording of evidence incriminating circumstances appearing in the evidence against appellant – convict and other accused were explained to them. The accused in their further statement recorded u/s 313 of the Cr. P. C. explained that they were innocent and false case was foisted upon them.

5. After hearing learned A.P.P. and learned advocate for the accused, learned trial Judge came to conclusion that prosecution has proved beyond reasonable doubt charge for the offence punishable u/s 498-A and 306 of the I.P.Code against appellant – convict and convicted and sentenced him but acquitted him for the offence punishable u/s 3 and 7 of the Dowry Prohibition Act. The trial Court acquitted other accused. Being aggrieved by the

judgment and order of conviction and sentence appellant – convict has preferred this Appeal.

6. Appellant - convict had preferred Criminal Misc. Application No. 613 of 2005 for suspension of substantive sentence of imprisonment. This Court (Coram : R.P. Dholakia, J.) vide order dated 24-3-2005 disposed of the said application and expedited hearing of appeal and directed the office to place the appeal in final hearing board after receiving paper-book. Thereafter, appellant – convict filed Criminal Misc. Application No. 7243 of 2005 and sought direction to fix the appeal for final hearing as paper-book was supplied. This Court (Coram : J.R. Vora, J.) by order dated 26-07-2005 directed the office to notify the appeal on final hearing board of Short Sentence Matters at its appropriate place immediately. Thereafter, the appeal has been placed before this Court for final hearing.

7. I have heard learned advocate Mr. J.M. Panchal for appellant and learned A.P.P. for respondent – State at length and in great detail. I have also perused the impugned judgment and record and proceedings of the case.

8. It is the prosecution case that the appellant – convict inflicted mental and

physical cruelty to Meeta as he had extra-marital relations. According to prosecution case, Meeta suffered mental cruelty on account of rude behaviour of father of appellant – convict at the time of Meeting for settlement. It is also prosecution case that when the complainant with Meeta and others came to attend 'Besana' on 8-3-2002, the accused did not pay attention to their arrival and Meeta was not allowed to play with Bansari, this caused mental shock to her and therefore committed suicide on 13-3-2002.

9. As regards mental and physical cruelty on account of extra-marital relations, there is no investigation. Except oral evidence of close relatives of Meeta, no other independent witness is examined by prosecution to prove extra marital relations of appellant – convict. Even accusations in that regard are also vague and general. The prosecution has not produced specific evidence in that regard.

10. The prosecution has examined brother and uncle of Meeta to prove charge of cruelty but no other independent witness has been examined. It is true that in order to prove charge of matrimonial cruelty, evidence of family members would be the best evidence and their evidence cannot be discarded simply because no other independent witness has been examined, but it is settled proposition that in such cases while

appreciating evidence of the family members, the Court has to be cautious as such evidence is not likely to be independent and uninfluenced. Keeping in mind this principle, the evidence adduced before the trail Court is required to be analysed.

11. The prosecution examined P.W. 1 Rajendrabhai Somabhai Panchal at Exh.15. The witness is father of Meeta. The witness has deposed about extra-marital relations of appellant – convict but has not given any specific instances. The accusations in that regard are vague. According to him, father of appellant – convict behaved rudely with them when they went to Ahmedabad for settlement but cross-examination of the witness indicates that talks of settlement lasted for about one to one and half hours and talks were peaceful. Therefore, it is difficult to believe that father of appellant – convict behaved rudely at the time of settlement. As regards mental shock caused to Meeta at the “Besana' and not allowing Meeta to play with Bansari, the evidence of the witness indicates that when they went to attend “Besana” appellant – convict and his father were sitting near photograph of deceased and they acknowledged their arrival by folding hands. Therefore, it is difficult to believe that when the witness and others went to attend “Besana” nobody paid

attention to them. Therefore, the prosecution case that nobody paid attention to the complainant and others when they went to attend “Besana” could not be believed. As regards prosecution case that nobody permitted Meeta to play with Bansari when they left “Besana” the witness has not deposed as to who did not permit Meeta to play with Bansari. Therefore, the evidence of this witness with regard to accusations of extra marital relations and inflicted cruelty to the deceased Meeta on that accusation can not be believed. Similarly, the case that when the complainant and others came for settlement, father of appellant – convict behaved rudely and asked complainant to take Meeta and kept Bansari and it caused mental cruelty to Meeta is also difficult to believe. It is also significant that the witness has for the first time deposed about cruelty by not giving food to Meeta and has also deposed that his wife informed him that Meeta talked to her about cruelty. As regards mental shock to Meeta, deposition of the witness does not inspire confidence. In view of this evidence, it is not safe to rely upon the evidence of this witness to connect the appellant convict with the offence.

12. The prosecution produced F.I.R. at Exh. 16. It is alleged therein that appellant – convict was keeping extra marital relations and was

inflicting physical and mental cruelty to Meeta. It is also alleged that in the meeting on 11-6-2000 father of appellant – convict behaved rudely and asked the complainant to take Meeta and kept Bansari with them. It is further alleged that on 8-3-2002 when they went for “Besana” no one called them and Meeta was not allowed to play with Bansari. On conjoint reading of evidence of P.W. 1 and F.I.R. Exh. 16, in my view, the prosecution case does not inspire confidence.

13. The prosecution produced application dated 3-3-2001 given by Meeta to Mehsana District Legal Aid Committee, at Exh. 45. It is alleged therein that after marriage she came to know that appellant – convict was not willing to marry her but had married only under pressure of his parents and therefore he was neglecting her. It is further alleged that appellant convict inflicted mental and physical cruelty by passing taunting remarks and forced her to bring luxurious articles from her parental house and gave threats to kill by setting her on fire if she did not bring such articles. It is also alleged that appellant convict had snatched away Bansari and was creating difficulty in providing food.

14. In order to prove application Exh. 45 the

prosecution examined P.W. 6 Patel Sarojben Nathalal, social worker of Mehsana District Women Legal Aid Committee at Exh.44. The evidence of this witness indicates that on receipt of the application Exh. 45 a notice was sent by ordinary post to appellant – convict at Ahmedabad address but no reply was received. Thereafter two notices were sent by ordinary post at appellant-convict's Ahmedabad address. There is no evidence to indicate that notices were received by appellant – convict. It appears from record that Meeta knew that appellant – convict was residing at Jamnagar but strangely no efforts were made to send the notices at Jamnagar address. Even application Exh. 45 also mentions appellant – convict's residential address of Ahmedabad. Therefore, it appears that correct residential address was not given in the application with some purpose.

15. The accusations levelled against appellant – convict in application Exh.45 indicate that they are contrary to the prosecution case. The tenor of the application indicates that Meeta made the application as she was willing to cohabit with appellant – convict even after alleged cruelty but appellant – convict and his family members did not take steps to take her to matrimonial house. The evidence of P.W.1 Rajendrabhai is contrary to application Exh. 45.

There is no whisper about alleged extra marital relations of appellant – convict in the application. On the contrary, the application alleged that appellant – convict had married under pressure of his parents. Analysing the evidence of P.W. 1 Rajendra, F.I.R. 16 and application Exh. 45, it is difficult to believe that appellant – convict had extra marital relations and had treated the deceased with cruelty.

16. The prosecution also examined P.W. 3 Arunaben Rajendrabhai Panchal mother of Meeta at Exh.34. According to this witness, Meeta informed her that appellant – convict had extra marital relations and was inflicting physical and mental cruelty. According to her, everyone got enraged at the meeting for settlement but the witness has not deposed that father of appellant – convict behaved rudely and asked them to take Meeta and kept Bansari with them. The contradictions in deposition are proved through Investigating Officer P.W. 7. This evidence of this witness with regard to cruelty is contrary to evidence of P.W. 1. Even there are other contradictions in evidence of this witness. Therefore, it would not be safe to rely upon her evidence with regard to cruelty.

17. The prosecution examined P.W. 4 Rakeshbhai

Rajendrabhai Panchal at Exh. 35. The witness is brother of the Meeta. According to the witness, Meeta informed them that appellant – convict had extra marital relations and was inflicting physical and mental cruelty to her. According to the witness, everyone got enraged at the meeting but has not deposed that father of appellant – convict behaved rudely and asked them to take Meeta. There are contradictions in the evidence of this witness. Therefore, evidence of this witness with regard to cruelty does not inspire confidence.

18. The prosecution examined P.W. 5 Chandrakant Somabhai Panchal at Exh. 36. The witness is the brother of complainant and had accompanied him to the meeting on 11-6-2000 at Ahmedabad. The evidence of this witness indicates that everyone at the meeting was enraged and they felt that it was dangerous to keep Meeta there, therefore she was taken to Mehsana. The witness has not deposed that father of appellant – convict behaved rudely nor has deposed that he asked them to take Meeta with them.

19. Analysing the evidence of these witnesses, it emerges that the witnesses have given different version about the cruelty. The oral evidence of all the witnesses with regard to

cruelty is contrary to the application Exh. 45 given by Meeta. Therefore, it is difficult to believe that appellant – convict had extra marital relations and therefore he treated Meeta with cruelty. In view of this evidence, the prosecution case that appellant – convict treated Meeta with cruelty as he had extra marital relations does not inspire confidence and learned trial Judge was not justified in accepting the evidence with regard to cruelty.

20. As regards prosecution case that father of appellant - convict behaved rudely and it caused mental cruelty to Meeta, the evidence is not convincing. P.W. 1 has deposed that meeting was peaceful whereas other witnesses have given different version. Therefore, the prosecution case in that regard is not reliable.

21. As regards prosecution case that Meeta suffered mental shock as nobody paid any attention when complainant and others attended “Besana”. P.W. 2, 3, 4 and 5 have deposed that when they went to attend “Besana” nobody called them but P.W. 1 has deposed that appellant – convict and his family members acknowledged their arrival by folding their hands. It was not such an occasion where you expect some to welcome you. The gesture shown to the witnesses indicates that in-laws of Meeta had noted their

presence at “Besana”. Therefore, it cannot be said that nobody called them at “Besana” and such conduct caused mental shock to Meeta. As regards prosecution case that nobody allowed Meeta to play with Bansari and that caused mental shock to her, the witnesses have given different versions. P.W. 1 has deposed that when they were returning from “Besana” they saw Bansari playing in the courtyard but has not given names as to who did not allow Meeta to play with Bansari. P.W.3 has deposed that brother-in-law of Meeta did not allow her to play with Bansari. P.W. 4 has deposed that appellant – convict, Kinnari, Dipak and brother-in-law of Meeta did not allow her to play with Bansari. In view of these different versions it is difficult to believe that Meeta was not allowed to play with Bansari. It is also difficult to believe that as Meeta was not allowed to play with Bansari she suffered mental shock. It is pertinent that Meeta stayed without Bansari for about 18 months but did not initiate any legal proceedings to take custody of Bansari. There is no evidence to indicate that Meeta tried to get custody by persuasion through relatives. Therefore, it is difficult to believe that she was sentimentally attached to Bansari. Therefore, it is difficult to accept that Meeta suffered mental shock. There is no cogent and reliable evidence to indicate that deceased suffered mental shock and remained under such

shock which instigated her to commit suicide. It is true that the witnesses have deposed that the deceased remained up-set after attending “Besana”, but there is no evidence with regard to mental status of Meeta between the period of return from “Besana” and suicide. Hence, it is difficulty to accept that Meeta was under mental shock. The evidence does not indicate that appellant - convict had knowledge that Meeta would commit suicide or that he intended the deceased to commit suicide. There is no evidence to indicate that there were compelling and alarming circumstances leaving no option for Meeta but to commit suicide. Therefore, it cannot be said that appellant – convict abetted suicide by instigating Meeta. The connection between the incident at the meeting on 8-3-2002 and suicide on 13-3-2002 has not been established beyond reasonable doubt. Therefore learned trial Judge was not justified in convicting appellant – convict for the offence punishable u/s 306 of the I.P. Code.

22. The prosecution has produced evidence with regard to the cause of death of the deceased and has examined the doctor to prove that the deceased died unnatural death. Learned advocate Mr. Panchal has not disputed the fact that deceased committed suicide. Therefore, no elaborate discussion with regard to the same is

required.

23. In view of above evidence, it is difficult to believe that appellant – convict inflicted physical and mental cruelty to Meeta. Therefore, in my view, the learned trial Judge committed serious error in convicting appellant – convict for the offence punishable u/s 498-A of the I.P. Code.

24. Learned advocate Mr. Panchal relied upon the decision of **Bhagwan Das V. Kartar Singh**, reported in **2007 Cri. L.l J. 3420.** In this decision, the Hon'ble Supreme Court observed that, “it often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 of the I.P. Code read with Section 107 of the I.P. Code.” In the instant case, as observed earlier, there is no cogent, reliable and convincing evidence to indicate that there was harassment by the appellant – convict to the deceased and such cruelty compelled her to commit suicide.

25. Learned advocate Mr. Panchal also relied upon the decision of **Indrasing M. Raol V. State of Gujarat**, reported in **1999 (2) G.L.H. 596,** wherein this Court held that, “the prosecution has to

establish that cruelty or harassment was unabated, incessant and persistent and was grave in nature unbearable and the same was with the intention to force the woman to commit suicide." In the present case, the prosecution has failed to establish that there was unabated, incessant and persistent cruelty from the appellant – convict to the deceased and such cruelty was grave in nature and unbearable. The prosecution has failed to prove that cruelty was inflicted with an intention to force the deceased to commit suicide.

26. Learned advocate Mr. Panchal relied upon the decision of **Bhanubhai Naginbhai Patel Vs. State of Gujarat** reported in **1962 (2) G.L.R. 797**, wherein this Court held that, merely the fact that husband was treating the wife with cruelty, would not be sufficient to establish abetment. The prosecution has to prove compelling or alarming circumstances leaving the victim with no option but to commit suicide. The Court also held that there must also be knowledge and intention relating to crime and "proximate assistance" In the present case, the evidence indicates that deceased was separated from the appellant – convict before about 18 months of the incident leaving behind her daughter aged about one year and there is no evidence that there were compelling or alarming circumstances and

the victim was left with no option but to commit suicide. There is no evidence with regard to knowledge and intention relating to the crime.

27. Learned A.P.P. Mr. K.C. Shah for the respondent – State relied upon the decision of **Sahebrao & Anr. V. State of Maharashtra,** reported in **AIR 2006 SUPREME COURT 2002**, wherein the Hon'ble Supreme Court while confirming the conviction for the offence punishable u/s 498-A and 306 of the I.P. Code held that, “in the facts of the case, it was established that the accused created such difficult and hostile environment that she was compelled to commit suicide.” It was in the facts of the case that Hon'ble Supreme Court held accused guilty but in the facts of this case the decision is not applicable.

28. In view of above, the learned trial Judge committed serious error in convicting appellant – convict for the offences charged against him. Therefore, the appeal deserves to be allowed and the appellant – convict is required to be acquitted for the offences charged against him.

29. In the result this appeal is allowed and judgment and order of conviction dated 26.11.2004 passed by the learned Additional Sessions Judge,

Fast Track Court, Mehsana, in Sessions Case No.232 of 2004 is quashed and set aside and appellant Bhupendrakumar Ishwarlal Panchal is acquitted for the offences charged against him and he is ordered to be set free forthwith, if he is not required in any other offence. Fine be returned to the appellant. Muddamal is ordered to be disposed of as directed by the trial Court.

(Bankim N. Mehta, J.)

/JVSatwara/